

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

GRANT LOUIS MESSNER,

Respondent,

v.

DIRECTOR OF REVENUE,

Appellant.

DOCKET NUMBER WD77506

Date: July 21, 2015

Appeal from:
Jackson County Circuit Court
The Honorable Robert L. Trout, Judge

Appellate Judges:
Division Three; Karen King Mitchell, Presiding Judge, Lisa White Hardwick and
Anthony Rex Gabbert, Judges

Attorneys:
James R. Hall, Oak Grove, MO for respondent.
Rachel M. Jones, Jefferson City, MO for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

GRANT LOUIS MESSNER

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v.

DIRECTOR OF REVENUE,

Appellant.

WD77506

Jackson County

Before Division Three; Karen King Mitchell, Presiding Judge, Lisa White Hardwick and Anthony Rex Gabbert, Judges

The Director of Revenue appeals a circuit court judgment reinstating Grant Messner's driving privileges following an administrative suspension for driving while intoxicated. The Director contends: (1) there is no substantial evidence to support the court's finding that the test results from a second breathalyzer test were unreliable because the officer did not comply with the operator's manual requirement for an additional 15-minute observation period; and (2) the court erroneously declared or applied the law in determining that an additional 15-minute observation period was necessary.

AFFIRMED.

Division Three holds: (1) The Director failed to meet its burden of proving that the officer's actions complied with the operator's manual and, thus, the circuit court did not err in making a credibility determination that the officer's conduct rendered the breathalyzer test results unreliable; and (2) The circuit court did not erroneously declare or apply the law in making a credibility determination that the Director failed to meet its burden of proving the reliability of the test results.

Opinion by: Lisa White Hardwick, Judge

July 21, 2015

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